

Key Questions and Issues Concerning Pursuit of an NRC Agreement for Michigan

At the March 2, 2007 meeting to consider the prospect for Michigan becoming an NRC Agreement State, NRC licensees and other stakeholders raised a number of important questions and issues.

1. Why become an Agreement State now? What is the rush?

With the dwindling number of non-Agreement States and the steady increase in NRC license fees, DEQ's Radiological Protection Program staff proposed to management in 2003 that we examine the potential to become an Agreement State. This proposal was incorporated as a departmental strategic goal in 2004. The DEQ convened a stakeholder advisory committee that met three times through 2005. The deliberations of that group helped lead the DEQ to make the formal proposal to the Directors of both DEQ and DCH to consolidate the radiation protection programs and to pursue an NRC Agreement.

The passage of the federal Energy Policy Act of 2005 added momentum to this effort. Because of provisions within that Act that affect regulatory authorities of the states and the NRC, NRC Chairman Dale Klein sent letters last fall to all non-Agreement State governors asking whether they had plans to sign Agreements with the NRC. In her response, Governor Granholm indicated that staffs from both the DEQ and DCH would develop a strategy and consult with stakeholders. She committed to providing a more definitive answer to the Commission in the spring of 2007. We will soon prepare a report to the Governor which will articulate our proposed strategy and indicate the level of stakeholder support. The Governor will then make the decision as to whether we move forward. If we move forward along the timeline currently envisioned, our final application for an agreement will be submitted during Governor Granholm's administration. This will help insure a smooth process.

Michigan will soon be the largest non-Agreement State in terms of number of licensees. The NRC representative at the March 2 meeting indicated that the fees Michigan licensees would pay would very likely go up as other states become Agreement States.

2. What are the benefits of becoming an Agreement State?

In the survey of other Agreement States conducted by the previous stakeholder advisory committee, licensees commented that the benefits included:

- State regulatory agencies were often more accessible and responsive to licensees;
- Regulatory authority was centered in one agency, rather than two or three, including both state and federal agencies;
- Annual fees charged by Agreement States were often substantially lower than comparable fees charged by NRC.

State regulatory agency staff cited the following advantages to the state:

- The more comprehensive radiation program under an Agreement offers greater capability to deal with the full range of radiation issues, incidents, and threats;

- Individual programs, such as the Radiological Emergency Preparedness Program, are strengthened;
- Fees remain in the state.

3. What happens if we do not complete the process in the four year timeframe?

The Agreement State Strategy outlined on March 2 included establishing a four year interim fee to provide the startup funding necessary to develop and staff a more comprehensive radioactive materials program. The provision for the interim fee would sunset after four years. Staff had discussed, and rejected, the idea of asking for fee collection authority for five years or until an agreement is signed. Our in-house workgroup decided on four years to reduce the burden on the licensees, and we believe we can complete the necessary work in this time. States that have failed to successfully complete a prompt transition to an agreement state are ones that had not secured funding for the transition in advance. Wisconsin, which used the interim fee approach that we are modeling, indeed accomplished its transition within four years. We believe that if Governor Granholm files a Letter of Intent for Michigan to become an Agreement State, that commitment, along with pursuing the strategy outlined at the March 2 meeting, should be sufficient to ensure we will not be hampered by delays in approval for establishing new positions and hiring new staff. In addition, stakeholder support is critical to successful passage of the proposed legislation and rules.

4. How will Agreement State program funding be protected from budget raids? Will surpluses be retained?

We are considering modeling our funds on other restricted fund programs within state government. We will recommend including language in our legislation which restricts the money to the Agreement State program. Other programs in state government, including the X-ray program, thus far have successfully maintained money within their programs through the current financial situation.

5. How will license fees change after becoming an Agreement State? Will there be a legislative cap?

We propose tying fee increases to the Detroit Consumer Price Index (as are current X-ray fees). This is contained in our draft revision of part 135, the enabling legislation for the radiation safety programs in Michigan. This effectively “caps” future license fees.

6. What will be the ongoing role of the NRC in Michigan if an Agreement is signed?

The NRC works closely with states as they work toward becoming Agreement States and continue to be involved with the state’s program once an Agreement is in place. The NRC representative at the March 2 meeting indicated that the State of Michigan will clearly have to demonstrate its ability to conduct and maintain a quality radiation protection program before NRC will sign an Agreement with the State. She indicated that the NRC would work closely with Michigan as we develop the program through inspector accompaniments, licensing training catered to the needs of Michigan staff, and technical assistance as needed.

Once becoming an Agreement State, the NRC regularly reviews the State’s program through the Integrated Management Performance Evaluation Plan (IMPEP). Further, the

NRC can provide technical assistance to an Agreement State for unique challenges or problems for which the State may not have expertise.

7. Will the State's rules be more restrictive than NRC?

In order to facilitate a speedy process, we plan to adopt the NRC regulations by reference as much as possible. There is no plan to make Michigan rules more restrictive than NRC's.

8. If a Radiation Advisory Committee (or Commission) is created, what will the structure be? What authority will the RAC have over the Department?

Part 135 currently contains a provision for a Radiation Advisory Board, though such a Board has not existed for many years. Our draft revisions to Part 135 would provide that the DCH Director, rather than the Governor, appoint members.

This committee would offer technical advice to the Department over a broad range of issues, including assisting in the drafting of rules, and serve as a sounding board for bringing issues and problems to the attention of the Department.

9. How will licensees appeal decisions of the Department?

Currently the Michigan Public Health Code (of which Radiation Control is a part) contains provisions for appealing decisions of the department. At this time we do not have a plan to alter this established structure.

10. How will Michigan attract and maintain qualified staff?

For technical positions, we will hire staff with a minimum of a bachelor's degree in physics. We will attempt to recruit experienced materials licensing and inspection staff. Michigan has had success hiring, training and retaining Health Physicists in the Radiation Safety Section in DCH. A review of salaries offered by other Agreement State programs shows that Michigan's compensation for experienced staff is competitive. We will explore the possibility of offering higher compensation for entry level staff as well.

11. Will the DEQ and DCH programs be merged if an Agreement is not pursued?

If the Agreement State initiative does not move forward, the two programs will likely not merge. Some positions in the DEQ's radioactive materials (RAM) program are currently supported through the State's general fund. We anticipate continued general fund support for the current RAM program positions as we develop the Agreement State program. However, the DCH Director has determined there will be no transfer unless there is a commitment to pursue the Agreement, and funding necessary to establish the program is secured.

12. Will the Energy Policy Act eliminate the current radioactive materials program?

The EPA Act removes states' authority to regulate naturally occurring or accelerator produced radioactive material (NARM). Without registration/licensing and inspection of these facilities, the RAM program will work exclusively on diffuse sources of naturally occurring radioactive material (NORM) and continue to respond to incidents. Over time,

individuals working with NORM will probably be merged into other programs whose specialty is not radiation safety. This will happen as the current RAM program supervisors begin retiring and their positions eliminated.

13. What will happen if Michigan does not pursue an Agreement?

If the decision is made to discontinue the current effort, Michigan will likely not become an Agreement State any time soon. It is not known what actions (if any) the NRC might take to encourage states to become Agreement States if only a small handful of non-Agreement States remain.